

TO: Mail Stop 8 Director of the U.S. Patent & Trademark Office P.O. Box 1450 Alexandria, VA 22313-1450	REPORT ON THE FILING OR DETERMINATION OF AN ACTION REGARDING A PATENT OR TRADEMARK
---	---

In Compliance with 35 § 290 and/or 15 U.S.C. § 1116 you are hereby advised that a court action has been
filed in the U.S. District Court Northern District of California on the following ☒ Patents or ☐ Trademarks:

DOCKET NO. CV 11-02361 EMC	DATE FILED 5/13/11	U.S. DISTRICT COURT 450 Golden Gate Avenue, P.O. Box 36060, San Francisco, CA 94102
PLAINTIFF OPLINK COMMUNICATIONS, INC., ET AL.		DEFENDANT FINISAR CORPORATION

PATENT OR TRADEMARK NO.	DATE OF PATENT OR TRADEMARK	HOLDER OF PATENT OR TRADEMARK
1 see Complaint		
2 6,439,918		
3 6,884,097		
4 6,908,323		
5 7,088,518		

In the above—entitled case, the following patent(s) have been included:

DATE INCLUDED	INCLUDED BY																		
	<input type="checkbox"/> Amendment <input type="checkbox"/> Answer <input type="checkbox"/> Cross Bill <input type="checkbox"/> Other Pleading																		
	<table border="1"> <thead> <tr> <th style="width: 25%;">PATENT OR TRADEMARK NO.</th> <th style="width: 25%;">DATE OF PATENT OR TRADEMARK</th> <th style="width: 50%;">HOLDER OF PATENT OR TRADEMARK</th> </tr> </thead> <tbody> <tr> <td>1 7,255,484</td> <td></td> <td></td> </tr> <tr> <td>2</td> <td></td> <td></td> </tr> <tr> <td>3</td> <td></td> <td></td> </tr> <tr> <td>4</td> <td></td> <td></td> </tr> <tr> <td>5</td> <td></td> <td></td> </tr> </tbody> </table>	PATENT OR TRADEMARK NO.	DATE OF PATENT OR TRADEMARK	HOLDER OF PATENT OR TRADEMARK	1 7,255,484			2			3			4			5		
PATENT OR TRADEMARK NO.	DATE OF PATENT OR TRADEMARK	HOLDER OF PATENT OR TRADEMARK																	
1 7,255,484																			
2																			
3																			
4																			
5																			

In the above—entitled case, the following decision has been rendered or judgement issued:

DECISION/JUDGEMENT

CLERK Richard W. Wicking	(BY) DEPUTY CLERK Sheila Rash	DATE May 18, 2011
-----------------------------	----------------------------------	----------------------

Copy 1—Upon initiation of action, mail this copy to Commissioner Copy 3—Upon termination of action, mail this copy to Commissioner
Copy 2—Upon filing document adding patent(s), mail this copy to Commissioner Copy 4—Case file copy

1 Dated: May 12, 2011
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

COOLEY LLP
THOMAS J. FRIEL, JR.
JAMES P. BROGAN
SARAH J. GUSKE

A handwritten signature in black ink, appearing to read "James P. Brogan", is written over a horizontal line.

Attorneys for Plaintiffs
Oplink Communications, Inc. and
Optical Communication Products, Inc.

1 COOLEY LLP
2 THOMAS J. FRIEL, JR. (State Bar No. 80065)
3 (tfriel@cooley.com)
4 101 California Street, 5th Floor
San Francisco, CA 94111-5800
Telephone: (415) 693-2000
Facsimile: (415) 693-2222

5 JAMES P. BROGAN (State Bar No. 155906)
6 (jbrogan@cooley.com)
7 SARAH J. GUSKE (State Bar No. 232467)
8 (sguske@cooley.com)
9 380 Interlocken Crescent, Suite 900
Broomfield, CO 80021-8023
Telephone: (720) 566-4000
Facsimile: (720) 566-4099

Attorneys for Defendants
10 OPLINK COMMUNICATIONS INC., and
11 OPTICAL COMMUNICATION PRODUCTS, INC.

12 UNITED STATES DISTRICT COURT
13 NORTHERN DISTRICT OF CALIFORNIA
14 SAN JOSE DIVISION

15 OPLINK COMMUNICATIONS, INC., a
16 Delaware corporation, OPTICAL
17 COMMUNICATION PRODUCTS, INC.,
18 a Delaware corporation,

19 Plaintiffs,

20 v.

21 FINISAR CORPORATION,
22 a Delaware corporation

23 Defendant.

24
25 Plaintiffs Oplink Communications, Inc. ("Oplink") and Optical Communication Products,
26 Inc. ("OCP") (collectively "Plaintiffs") for their complaint against Defendant Finisar Corporation
27 ("Finisar" or "Defendant") allege as follows:
28

ORIGINAL FILED

MAY 18 2011

Richard W. Wiekling
Clerk, U.S. District Court
Northern District of California
San Jose

CV 11-02361

Case No. _____

COMPLAINT FOR DECLARATORY
JUDGMENT OF NON-INFRINGEMENT OF
U.S. PATENTS NOS. 6,439,918; 6,884,097;
6,908,323; 7,088,518; AND 7,255,484

DEMAND FOR JURY TRIAL

EMC

1 PARTIES

2 1. Plaintiff Oplink Communications, Inc. is a Delaware corporation with a principal
3 place of business at 46335 Landing Parkway, Fremont, California 94538.

4 2. Plaintiff Optical Communication Products, Inc. is a Delaware corporation with a
5 principal place of business at 46335 Landing Parkway, Fremont, California 94538.

6 3. On information and belief, Defendant Finisar Corporation is a Delaware
7 corporation with its principal place of business at 1389 Moffett Drive, Sunnyvale, California
8 94089-1134.

9 JURISDICTION AND VENUE

10 4. This is an action for a declaratory judgment of noninfringement of United States
11 Patent Nos. 6,439,918 B1 ("the '918 patent"); 6,884,097 B2 ("the '097 patent"); 6,908,323 B2
12 ("the '323 patent"); 7,088,518 B2 ("the '518 patent"); and 7,255,484 B2 ("the '484 patent")
13 (collectively, the "Patents"). The action arises under the Declaratory Judgment Act, 28 U.S.C.
14 §§ 2201-2202, and the patent laws of the United States, including Title 35, United States Code.
15 This Court has original jurisdiction over the subject matter of this action under 28 U.S.C. § 1338.

16 5. This Court has personal jurisdiction over Finisar because Finisar, a corporation,
17 has a principal place of business in the State of California, conducts business in California and, as
18 a result of this business, has continuous and systematic contacts with California.

19 6. Venue is proper in this district pursuant to 28 U.S.C. §§ 1391(b) and (c) because
20 Finisar, a corporation, has a principal place of business in this district, conducts business in this
21 district, and is subject to personal jurisdiction in this district.

22 INTRADISTRICT ASSIGNMENT

23 7. This case is an Intellectual Property Action subject to district-wide assignment
24 under Civil Local Rule 3-2(c).

25 THE PATENTS

26 8. The '918 patent is entitled "Electronic Module Having an Integrated Latching
27 Mechanism." The named inventors of the '918 patent are Chris Togami and Guy Newhouse. A
28 true and correct copy of the '918 patent is attached hereto as Exhibit A.

1 9. The '097 patent is entitled "Transceiver Latch Mechanism." The named inventor
2 of the '097 patent is Donald A. Ice. A true and correct copy of the '097 patent is attached hereto
3 as Exhibit B.

4 10. The '323 patent is entitled "Transceiver Latch Mechanism." The named inventor
5 of the '323 patent is Donald A. Ice. A true and correct copy of the '323 patent is attached hereto
6 as Exhibit C.

7 11. The '518 patent is entitled "Bidirectional Optical Device." The named inventors
8 of the '518 patent are Jimmy A. Tatum and James K. Guenter. A true and correct copy of the
9 '518 patent is attached hereto as Exhibit D.

10 12. The '484 patent is entitled "Method and System for Releasing a Pluggable
11 Device." The named inventors of the '484 patent are Harold Y. Walker, Jr. and Richard L. Bell.
12 A true and correct copy of the '484 patent is attached hereto as Exhibit E.

13 13. All of the Patents are assigned to Finisar on their face and, on information and
14 belief, Finisar purports to be the holder of all right, title, and interest in the Patents.

15 **EXISTENCE OF AN ACTUAL CONTROVERSY**

16 14. There is an actual controversy within the jurisdiction of this Court under 28 U.S.C.
17 §§ 2201 and 2202.

18 15. On December 12, 2010, Finisar filed a complaint in this district alleging patent
19 infringement of eleven different patents by Plaintiffs (the "California Action"). None of those
20 patents are at issue here. Finisar alleged that its patents were infringed by Plaintiffs'
21 optoelectronic transceivers. A true and correct copy of that complaint is attached hereto as
22 Exhibit F.

23 16. On March 7, 2011, OCP filed a complaint in the Eastern District of Texas for
24 patent infringement against Finisar alleging infringement of five patents owned by OCP (the
25 "Texas Action"). OCP's patents in that case related to the design of lasers and their components,
26 specifically Vertical-Cavity Surface Emitting Lasers ("VCSELs"). A true and correct copy of
27 that complaint is attached hereto as Exhibit G.

1 17. On April 29, 2011, Finisar filed its Answer and Counterclaims against Plaintiffs in
2 the Texas Action asserting infringement of the same Patents at issue here. Finisar's
3 Counterclaims in the Texas Action alleged infringement by the same technology and products
4 alleged to infringe in the California Action. A true and correct copy of Finisar's Answer and
5 Counterclaims from the Texas Action is attached hereto as Exhibit H.

6 18. Based upon the above facts, there is an actual justiciable controversy concerning
7 each of the Patents within the jurisdiction of this Court under 28 U.S.C. §§ 2201 and 2202.

8 **FIRST CAUSE OF ACTION**

9 **Declaratory Judgment of Non-Infringement of the '918 Patent**

10 19. Plaintiffs repeat and reallege each and every allegation set forth in paragraphs 1
11 through 18 in their entirety.

12 20. Finisar alleges in the Texas Action that Plaintiffs have been and are infringing
13 under 35 U.S.C. § 271 one or more claims of the '918 patent by making, using, offering to sell,
14 importing, and/or selling or assisting, abetting, and encouraging others with making, using,
15 offering to sell, selling, and/or importing in and into the United States electronic modules having
16 an integrated latching mechanism that allegedly embody the patented invention, including
17 without limitation certain SFP and SFP+ transceivers.

18 21. Plaintiffs manufacture transceivers that are advertised as "SFP" and "SFP+" that
19 do not infringe any claim of the '918 patent.

20 22. There exists, therefore, an actual and justiciable controversy, within the meaning
21 of 28 U.S.C. §§ 2201 and 2202 between the Plaintiffs and Finisar with respect to the non-
22 infringement of the claims of the '918 patent.

23 23. Absent a declaration of non-infringement, Finisar will continue to wrongfully
24 allege infringement of the '918 patent against the Plaintiffs and thereby cause them irreparable
25 injury and damage.

26 24. Accordingly, the Plaintiffs seek a judicial determination and declaration that the
27 Plaintiffs do not infringe, induce infringement or contributorily infringe any claim of the '918
28 patent.

1
2
3
4
5
6
7
8
9
0
1
2
3
4
5
6
7
8
9
0
1
2
3
4
5
6
7
8

2
3
4
5
6
7
8
9
0
1
2
3
4
5
6
7
8
9
0
1
2
3

34

5
6
7
8
9
0

1
23
4
56
7
89
0
1

23

3

45

5
7
3

1 offering to sell, selling, and/or importing in and into the United States products that allegedly
2 embody the patented invention, including without limitation certain XFP transceivers.

3 33. Plaintiffs manufacture transceivers that are advertised as "XFP" that do not
4 infringe any claim of the '323 patent.

5 34. There exists, therefore, an actual and justiciable controversy, within the meaning
6 of 28 U.S.C. §§ 2201 and 2202 between the Plaintiffs and Finisar with respect to the non-
7 infringement of the claims of the '323 patent.

8 35. Absent a declaration of non-infringement, Finisar will continue to wrongfully
9 allege infringement of the '323 patent against the Plaintiffs and thereby cause them irreparable
10 injury and damage.

11 36. Accordingly, the Plaintiffs seek a judicial determination and declaration that the
12 Plaintiffs do not infringe, induce infringement or contributorily infringe any claim of the '323
13 patent.

14 **FOURTH CAUSE OF ACTION**

15 **Declaratory Judgment of Non-Infringement of the '518 Patent**

16 37. Plaintiffs repeat and reallege each and every allegation set forth in paragraphs 1
17 through 36 in their entirety.

18 38. Finisar alleges in the Texas Action that Plaintiffs have been and are infringing
19 under 35 U.S.C. § 271 one or more claims of the '518 patent by making, using, offering to sell,
20 importing, and/or selling or assisting, abetting, and encouraging others with making, using,
21 offering to sell, selling, and/or importing in and into the United States bidirectional optical
22 devices that allegedly embody the patented invention, including without limitation certain BiDi
23 transceivers.

24 39. Plaintiffs manufacture transceivers that are advertised as "BiDi" that do not
25 infringe any claim of the '518 patent.

26 40. There exists, therefore, an actual and justiciable controversy, within the meaning
27 of 28 U.S.C. §§ 2201 and 2202 between the Plaintiffs and Finisar with respect to the non-
28 infringement of the claims of the '518 patent.

41. Absent a declaration of non-infringement, Finisar will continue to wrongfully allege infringement of the '518 patent against the Plaintiffs and thereby cause them irreparable injury and damage.

42. Accordingly, the Plaintiffs seek a judicial determination and declaration that the Plaintiffs do not infringe, induce infringement or contributorily infringe any claim of the '518 patent.

FIFTH CAUSE OF ACTION

Declaratory Judgment of Non-Infringement of the '484 Patent

43. Plaintiffs repeat and reallege each and every allegation set forth in paragraphs 1 through 42 in their entirety.

44. Finisar alleges in the Texas Action that Plaintiffs have been and are infringing under 35 U.S.C. § 271 one or more claims of the '484 patent by making, using, offering to sell, importing, and/or selling or assisting, abetting, and encouraging others with making, using, offering to sell, selling, and/or importing in and into the United States optoelectronic modules that allegedly embody the patented invention, including without limitation certain SFP transceivers.

45. Plaintiffs manufacture transceivers that are advertised as "SFP" that do not infringe any claim of the '484 patent.

46. There exists, therefore, an actual and justiciable controversy, within the meaning of 28 U.S.C. §§ 2201 and 2202 between the Plaintiffs and Finisar with respect to the non-infringement of the claims of the '484 patent.

47. Absent a declaration of non-infringement, Finisar will continue to wrongfully allege infringement of the '484 patent against the Plaintiffs and thereby cause them irreparable injury and damage.

48. Accordingly, the Plaintiffs seek a judicial determination and declaration that the Plaintiffs do not infringe, induce infringement or contributorily infringe any claim of the '484 patent.

PRAYER FOR RELIEF

Wherefore, Plaintiffs Oplink Communications, Inc. and Optical Communication Products,

1 Inc. demand judgment against Defendant Finisar Corporation, and respectfully request that this
2 Court enter the following Orders:

3 A. Declaring that the Plaintiffs do not infringe any claim of United States Patent
4 No. 6,439,918 B1;

5 B. Declaring that the Plaintiffs do not infringe any claim of United States Patent
6 No. 6,884,097 B2;

7 C. Declaring that the Plaintiffs do not infringe any claim of United States Patent
8 No. 6,908,323 B2;

9 D. Declaring that the Plaintiffs do not infringe any claim of United States Patent
10 No. 7,088,518 B2;

11 E. Declaring that the Plaintiffs do not infringe any claim of United States Patent
12 No. 7,255,484 B2;

13 F. Declaring that Finisar and its officers, employees, agents, alter egos, attorneys, and
14 any persons in active concert or participation with them be restrained and enjoined from further
15 prosecuting or instituting any action against each of the Plaintiffs claiming that the Patents are
16 valid, enforceable, or infringed, or from representing that Plaintiffs' products and/or services
17 infringe any of the Patents;

18 G. A judgment declaring this case exceptional under 35 U.S.C. § 285 and awarding
19 Plaintiffs their attorneys' fees and costs in connection with this case; and

20 H. Awarding Plaintiffs such other and further relief as this Court deems just and
21 proper.